

103^D CONGRESS
2^D SESSION

S. 1907

To require that the Department of Veterans Affairs adjudicate and resolve certain claims relating to medical malpractice in the health care services provided by the Department.

IN THE SENATE OF THE UNITED STATES

MARCH 8, (legislative day, FEBRUARY 22), 1994

Mr. ROCKEFELLER (for himself, Mr. GRAHAM, and Mr. DASCHLE) introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To require that the Department of Veterans Affairs adjudicate and resolve certain claims relating to medical malpractice in the health care services provided by the Department.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ADJUDICATION AND RESOLUTION OF CERTAIN**
4 **CLAIMS RELATING TO MEDICAL MAL-**
5 **PRACTICE.**

6 (a) ADJUDICATION AND RESOLUTION OF CLAIMS.—
7 The Secretary of Veterans Affairs shall—

1 (1) take appropriate actions to determine
2 whether the injury (or aggravation of an injury) of
3 any veteran as the result of the treatment of the vet-
4 eran was the result of medical malpractice on the
5 part of the Department of Veterans Affairs (and not
6 of the veteran's own willful misconduct); and

7 (2) in the case of any injury so determined,
8 provide appropriate compensation to the veteran in
9 accordance with section 1151 of title 38, United
10 States Code.

11 (b) STATEMENT OF INTENT AND CONSTRUCTION.—
12 Congress enacts the requirement set forth in subsection
13 (a) in order to ensure the adjudication and resolution of
14 certain claims following the decision in *Gardner v.*
15 *Derwinski*, 1 Vet.App. 584 (1991), *aff'd*, sub nom. *Gard-*
16 *ner v. Brown*, 5 F.3d 1456 (Fed. Cir. 1993). The require-
17 ment may not be construed as an expression of Congres-
18 sional intent to limit the claims subject to adjudication
19 under section 1151 of title 38, United States Code, to
20 claims related to injuries resulting from medical mal-
21 practice.

22 (c) DEFINITIONS.—In this section—

23 (1) The term “treatment”, in the case of a vet-
24 eran, means any examination, hospitalization, medi-
25 cal or surgical treatment, or course of vocational re-

1 habilitation under chapter 31 of title 38, United
2 States Code, that is provided to the veteran by the
3 Department of Veterans Affairs.

4 (2) The term “medical malpractice” means any
5 carelessness, negligence, error in judgment, lack of
6 proper medical skill, or similar instance of indicated
7 fault in the treatment of a veteran.

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